APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROSE CONNOR, a/k/a ROSE CONNER,
Debtor,
ROSE CONNOR, a/k/a/ ROSE CONNER,
Plaintiff,
vs.
W. C. LEASURE, an individual,
and OLD HOME MANOR, INC., a
Pennsylvania corporation,
Defendants,
and
TED SIMON, JOHN REGOLI, and
ROBERT H. MILLER, in their
capacity as Commissioners for
Westmoreland County,
Commonwealth of Pennsylvania,
Int. Defendants.

Civil Action
No. 81-274

Memorandum Opinion

BLOCH, District J.

The essential finding of Bankruptcy Judge Cosetti, from which all other findings in his opinion flow, is that, absent notice to the then record owner, Rose Connor, the Treasurer of Westmoreland County could not have sold the property in dispute in this case on February 23, 1944, to the Westmoreland County Commissioners for unpaid taxes. Thus, Judge Rial could not, 21 or 22 years later, "clarify" this transaction to include the Connor property. In addition, the Westmoreland County Commissioner's quit-claim deed to W. C. Leasure conveyed only property which they then owned, which could not include the Connor property.

In *In re Return of Sale of Tax Claim Bureau*, 76 A.2d 749, 751 (1950), the Pennsylvania Supreme Court formulated the question for decision as "whether a property owner may have his or her property swept away without being given the notice which the act requires." The Court's answer to the question was an unequivocal no.

Because *In re Return of Sale of Tax Claim Bureau* so clearly governs the outcome of this litigation, we have no difficulty in upholding the Bankruptcy Court's jurisdiction, appellant Leasure's claim not even rising to the level of a colorable claim, as well as its decision of the merits. For the same reason, Judge Schaffler's denial of Leasure's Motion for Relief from Stay Provided by Rule 11-44 was also clearly correct.

We believe that the fears of the intervenors, Westmoreland County Commissioners, are unfounded. The invalidity of the enlargement of the Treasurer's deed by the Court of Common Pleas to include the Connor property, as well as their inability to quit-claim the property to Leasure, rests on the failure, in 1944, to give Connor notice of the Treasurer's sale and reaches no further than that. To the extent that the Bankruptcy Court may have determined that a Treasurer's deed without the word "coal" in its description does not convey coal, that the Commissioners cannot sell property obtained for taxes through a quit-claim deed, and that the assessment of coal at the value of coal leases is not an assessment of the whole estate, these conclusions were not necessary to his decision and we do not affirm them.

An appropriate Order will be issued.

ALAN N. BLOCH
United States District Judge

Date: 8/14/81

Order

AND NOW, this 14th day of August, 1981, upon consideration of Defendant's Appeal to District Court in the above captioned matter on February 19, 1981,

IT IS HEREBY ORDERED that to the extent indicated by this Court's Opinion, the Order of Court and Memorandum Opinion of Bankruptcy Judge Joseph L. Cosetti entered on December 10, 1980, is AFFIRMED. Judge Bernhard Schaffler's Orders of April 20, 1979, May 4, 1979, and March 21, 1980, to the extent it was not altered by Judge Cosetti's Order are also AFFIRMED.

ALAN N. BLOCH
United States District Judge

cc: Robert O. Lampl, Esquire
220 Grant Street, Pittsburgh, PA 15219.

Robert J. Shostak, Esquire
2532 Oliver Building, Pittsburgh, PA 15222.

Irving Bloom and Aaron M. Kress, Esquires
Westmoreland County Solicitor's Office
Court House Square, Greensburg, PA 156

APPENDIX B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: ROSE CONNOR a/k/a ROSE CONNER, Debtor	No. 77-261

Memorandum Opinion

This court is presented with three motions by the defendant: first, for Amended Findings of Fact and for Conclusions of Law pursuant to Bankruptcy Rule 752(b); secondly, to Alter or Vacate Judgment pursuant to Rule 59(e), F.R.Civ.P. and Bankruptcy Rule 923 entered by the Honorable Bernhard Schaffler on March 21, 1980; and finally, a Motion for a New Trial pursuant to Rule 59(a)(2), F.R.Civ.P. and Bankruptcy Rule 923.

After two conferences with counsel for both parties, and after reading and re-reading the record, this court denies the Motion for a New Trial and denies the Motion to Alter and/or Vacate Judgment. This court considers the Motion for Amended Findings of Fact and for Conclusions of Law.

This litigation is essentially a dispute over ownership of coal property. Many extraneous matters have intervened and we ignore those matters. Ultimately, this case must rise or fall over good title. Three groups of issues recur in the above motions. The defendant raises the issue of denial of due process by way of an accusation which points to circumstances which defendant believes places the impartiality of former Bankruptcy Judge

Schaffler in question. This motion is denied. Nothing in this record supports this motion. Judge Schaffler permitted all the documents of title to be admitted and a new trial would only present these same documents.

The defendant also raises the issue of jurisdiction of the Bankruptcy Court. We concur in the Memorandum Opinion of Judge Schaffler finding that jurisdiction exists. The law of Pennsylvania is established on these questions. The fact in this case do not require new law.

Finally, the defendant raises questions as to the findings of fact and law by Judge Schaffler concerning the deeds in dispute. We have reviewed the documents, the other facts and the law related to the chain of title from the exhibits and the record.

FINDINGS OF FACT

(1) The property in question was part of a large tract of coal owned by the Latrobe-Connellsville Coal & Coke Company. On March 17, 1930 one C. P. Lineaweaver acquired title to all of the remaining Latrobe-Connellsville Coal & Coke Company properties and coal. (T-1, 104).

(2) On June 30, 1932 C. P. Lineaweaver conveyed the same property to the Pennsylvania Company for Insurance on Lives and Granting Annuities (hereinafter referred to as "Pennsylvania Company") in a deed recorded at Deed Book Volume 923 at page 258. (Plaintiff's Exhibit #1).

(3) In 1941, Pennsylvania Company made the following five conveyances of all of its coal:

A. Conveyance to James B. McDowell of the Freeport coal by deed dated April 24, 1941, recorded in Deed Book Volume 1080, page 459 (T-3, 10);

B. Conveyance to Florence Berlin, dated April 15, 1941, recorded in Deed Book Volume 1096, page 2 (T-3, 10);

C. Conveyance to Lawrence John, by deed dated April 24, 1941, recorded in Deed Book Volume 1080, page 461, this conveyance being for fifty acres as specifically described in the deed (T-3, 10);

D. Conveyance to Rose Connor, by deed dated April 24, 1941, for a specifically described parcel of coal, containing one hundred sixty-seven and one-half acres of remaining coal, which deed was recorded on April 30, 1941, in Deed Book Volume 1080, page 457 (hereinafter "1080 Deed") (Plaintiff's Exhibit #2);

E. Conveyance to Rose Connor by deed dated April 24, 1941, recorded two years later on April 2, 1943, in Deed Book Volume 1128, page 578. This deed contains no specific descriptions, but refers to tracts by numbers (hereinafter "1128 Deed") (Plaintiff's Exhibit #20). This property is in dispute as to ownership in this case.

(4) It is not disputed that for the years 1939, 1940 and 1941 Pennsylvania Company paid no taxes assessed against its property described in Deed Book Volume 923, page 258 (T-3, 9, 10, 11, 16 and 17). It is also not disputed that Rose Connor paid no taxes on her properties (T-3, 205). Defendant finds particularly important the following language found in the 1128 Deed and the 1080 Deed: "This conveyance is made subject to the liens of all unpaid taxes against the said premises, payment of which purchaser hereby assumes." Defendant regards this language as placing the title in Rose Connor in doubt because taxes were not paid. This court holds that the above language in the deed merely excepted from the

warrant of title given by grantor the warrant that taxes were paid. It was not a condition precedent to the grant becoming effective.

(5) The Treasurer of Westmoreland County, Pennsylvania, on the 23rd day of February, 1944, sold all property of the Pennsylvania Company assessed and liened for unpaid taxes for the year 1941, to the Westmoreland County Commissioners, by Treasurer's Deed No. 714 (Plaintiff's Exhibit #6 and Defense Exhibit "F") which deed was duly executed, acknowledged and delivered by the County Treasurer to the County Commissioners. This was accomplished pursuant to §7 of the Act of 1931, May 29, P.L. 280, as amended, 72 P.S. §5271(g). The notice required by this Act was given to the Pennsylvania Company as set forth in a petition of the Treasurer to the Westmoreland Court of Common Pleas (Defense Exhibits "B" and "C").

We hold that as to the No. 714 Treasurer's Deed dated February 23, 1944, on its face the deed's purpose was to take for taxes of $5,682.26 a tract of land in Derry Township containing land and buildings from the Pennsylvania Company for Insurance c/o C. P. Lineaweaver. On its face "coal property" is not described nor is the name of Rose Connor, the recorded owner, shown.

The Eastern District of Pennsylvania, in *Mamie Ponder, et al. v. Thomas Mortieth, et al.* at No. 73-1991 (unpublished opinion) before Circuit Judge Van Dusen, District Judge Higgenbotham and District Judge Weiner held under P.L. 280 of May 29, 1931, 72 P.S. 5971a-577th that notices which were required to be given by mail under the subject Act which were not actually received were inadequate, resulting in a deprivation of federally protected rights to procedural due process and invalidated the tax sale. As to the No. 714 Deed, Rose Connor

would not have had notice because on its face the deed and related documents only report that the former owner, Pennsylvania Company, was noticed. The County Treasurer would have had notice at DBV 1128 on April 2, 1943 and at DBV 1080 on April 30, 1941 that Rose Connor was the new owner; the County sale was dated February 23, 1944. We hold on these facts and on the holding in *Ponder, supra*, that Treasurer's Deed No. 714 takes no property of Rose Connor. See also *Reynolds v. Nestor*, Commonwealth Court 1594 C.D. 1979; Opinion dated July 14, 1980.

(6) Treasurer's Deed No. 875 dated August 7, 1944 purports to sell for taxes due for the year 1942 a certain tract of land of Rose Connor containing 167½ acres of Freeport Coal situated in the Township of Derry, County of Westmoreland. This sale would validly take 167½ acres of Freeport Coal for taxes assessed to Rose Connor (Plaintiff's Exhibit #7).

The Freeport Coal described as owned by Ross Connor in the above deed is not involved in this dispute. It would appear that the deed to James B. McDowell, DBV 1080, page 459 (T-3, 10) conveyed Freeport Coal (See Finding (3)A. above).

(7) Treasurer's Deed No. 758 was not actually presented into evidence and not available from official records. Other evidence of its existence was presented. A tax sale is reported by other documents to take Rose Connor's property for 1943 delinquent taxes at Sale Docket 9, page 18 and Treasurer's Deed No. 758 on December 10, 1945. This deed describes *167½ acres of Pittsburgh Coal* as the description of property taken. This sale would appear to be a valid tax sale of Rose Connor's interest in 167½ acres of Pittsburgh Coal as a result of the assessment described as "167½ acres of

coal", returned against Rose Connor (T-3, 11 and 16) and the resulting taxes. (Plaintiff's Exhibit #8).

Title to the property assessed as "167½ acres of Pittsburgh Coal" would be passed from the County Treasurer to the Westmoreland County Commissioners. The actual property which this sale took from Rose Connor is the center of this dispute.

(8) By virtue of a decree of the Court of Common Pleas of Westmoreland County, Pennsylvania entered at No. 14 May Term 1948, the Commissioners were authorized to sell the above property to Atlantic Crushed Coke Company for payment of a compromise on the amount of taxes unpaid by the Pennsylvania Company and Rose Connor for the years 1939 through 1946. The authorized amount (which included taxes for all of these years) was paid by the Atlantic Crushed Coke Company, and a deed was issued by the County Commissioners, dated February 27, 1948, and recorded in Westmoreland County, Pennsylvania, in Deed Book Volume 1320, page 580 (Plaintiff's Exhibit #5).

This deed contained a description of the property, being the remaining coal of 167½ acres and being the same description contained in the Rose Connor 1080 Deed.

The record of the proceedings conducted before the Court at No. 14 May Term 1948 shows that Rose Connor was present, represented by counsel, and was given an opportunity to be heard (Plaintiff's Exhibit #10). The court approved the sale and vested title of all the 1080 property in Atlantic Crushed Coke Company.

It is clear from the judicial sale by the County to Atlantic Crushed Coke Company that the 1080 property of Rose Connor was taken by deed 758 and not the 1128

property deed. The Petition of the County Commissioners to sell to Atlantic Crushed Coke Company recites the above explicitly (Plaintiff's Exhibit #10, Defendants' Exhibit "D").

It is also clear from the quit-claim deed that Rose Connor gave to Atlantic Crushed Coke Company that she quit-claimed her rights in the 1080 property (Plaintiff's Exhibit #11).

A conveyance back from Atlantic Crushed Coke Company to Rose Connor, dated March 5, 1948 and recorded on November 9, 1954 at DBV 1523, page 466 recites that it was part of the premises at DBV 1320, page 580 and part of the DBV 1080, page 457. All of the above refer only to the 1080 deed.

The defendant argues that the taxes assessed on the Pennsylvania Company property for 1939, 1940 and 1941 were not paid and that because all of the Pennsylvania Company property was assessed as a unity when it was severed in 1941, any part of it could have been sold for all of the taxes. The plaintiff argues that the Pennsylvania Company land was not contiguous and therefore when it was severed in 1941 by deed 1080 and 1128 only that which was previously assessed and contiguous could be taxed. The plaintiff further argues that the property in dispute, the 1128 deed, was under water and for that reason would not have been assessed for taxes, etc.

The court makes no finding as to which parcel—1080 or 1128—was under water or burdened by an assessment. This court need not reach that question. The 714 deed took no property of Rose Connor. See Finding 5 above. The 758 deed, which took "167¼ acres of Pittsburgh Coal" of Rose Connor, is described below as the 1080 property. We find that the judicial sale by the Commis-

sioners dated February 27, 1948 and recorded February 28, 1948 at DBV 1320, page 580 recites that by virtue of deeds 714, 875, and 758 taxes due by the Pennsylvania Company for the years 1939, 1940, 1941, and Rose Connor 1942-1946, only conveyed the 1080 property. They obviously regarded the assessment of 167½ acres to be against the 1080 property only.

(9) An Order by the Court of Common Pleas of Westmoreland County states that it is at "No. 14 May Term 1948," and that "on December 29, 1976 by rule issued on November 5, 1976 and served on the Solicitor for the County of Westmoreland (December 3, 1976, being returnable twenty days thereafter), it being the intent to clarify the Treasurer's Deed No. 714 for the year 1941, Treasurer's Deed No. 875 for 1942 and Treasurer's Deed No. 758 for 1943 to include properties conveyed to Rose Connor at DBV 1128, page 578, said deed being subject to the liens of unpaid taxes along with all other properties hereinabove referred to, which taxes were paid by W. C. Leasure, the present owner of all properties of the Pennsylvania Company." This order is signed by Judge Rial.

We hold the above order of Judge Rial attempting to enlarge three Treasurer's Deeds for the years 1944 and 1945 in the year of 1976, twenty-one or twenty-two years later, is not valid as to any rights that Rose Connor has in the 1128 property. At the very least an action to quiet title would have been necessary and Rose Connor given notice and an opportunity to defend such action. See 12 P.S. §1541, 1543, 1545 and Pa.R.Civ.P. 1061. To attempt to achieve this result by a Rule to Show Cause procedure is not the law of Pennsylvanja and is of no effect. Further, plaintiff claims that no official record exists of such Order. We need not reach that issue and make no finding in

that regard. We hold that whether or not it exists as an official document and record is insignificant since it has no basis in Pennsylvania law for the purpose of divesting an interest of Rose Connor in the 1128 property.

Plaintiff's Exhibit #17 displays a motion by the Commissioner of Westmoreland County authorizing the Commission to execute a corrected quit-claim deed redeemed by the original owner, W. C. Leasure, for back taxes. Plaintiff's Exhibit #18 displays a quit-claim deed on the part of Westmoreland County to W. C. Leasure for the 1128 and the 1080 properties of Rose Connor and the McDowell 1080 property which recites the February 23, 1948 tax sale and the above Order by Judge Rial on December 29, 1976 as its authority.

Obviously, no more can be given in a deed than is owned. A quit-claim promises no more. These actions by the Westmoreland County Commissioners raise questions which I need not reach in this decision. We find no basis exists in law to sell property obtained by the Commissioners for taxes through the instrument of a quit-claim deed. Further, with regard to the 1128 property, it is not established that W. C. Leasure is an original owner with rights of redemption; mere recital by the Commissioners does not make it so. The payment of taxes by W. C. Leasure does not establish a right to redeem. The right to redeem exists according to law. W. C. Leasure has title to the 1080 property purchased from Atlantic Crushed Coke Company. Atlantic did not claim the 1128 property.

The Order of Judge Rial creates mischief in this proceeding. Whatever it does, it cannot create a right of redemption twenty-one years after a tax sale and it cannot enlarge a deed given twenty-one years previous.

(10) The record also shows that the Treasurer of Westmoreland County sold for taxes several other properties of Rose Connor on August 7, 1950. The properties were sold for 1947 and 1948 taxes and described as follows:

Defense Exhibit	Treasurer's Deed	Amount	Description
G	554	$180.61	"8½ acres of coal"
H	556	52.53	"1.38 acres"
I	557	172.33	"4.768 acres"
J	558	180.58	"5 acres"
K	559	13.26	"1¾ acres"

Only Defense Exhibit "G", Treasurer's Deed No. 554 above, describes a taking of coal property. The record is not clear as to which grantor deed created the interest in Rose Connor which Treasurer's Deed No. 554 divested. The record is not clear as to the description of the property and whether the Westmoreland County Commissioners have, pursuant to a judicial sale, passed title to the "8½ acres of coal" to another party.

We make no finding except that the Commissioners would have had good title absent redemption by Rose Connor to coal property which the 554 deed described as "8½ acres of coal". Further evidence is needed to describe this property.

(11) As to the taxes paid by W. C. Leasure, the taxes were assessed to the 1128 property, and believing that he was the owner or believing that thereby he became the owner by tax purchase, we make no finding. Whether these taxes should be refunded by Westmoreland County or become a claim against the bankruptcy estate of Rose Connor is left to future actions.

We conclude that title to the 1128 property remains in Rose Connor unless facts indicate that the Treasurer's Deed No. 554 derived from the 1128 property.

An appropriate Order will be entered.

Dated at Pittsburgh, Pennsylvania this
10th day of December, 1980

JOSEPH L. COSETTI
Bankruptcy Judge

cc: Robert O. Lampl, Esq.
220 Grant Street
Pittsburgh, PA 15219

Robert J. Shostak, Esq.
2532 Oliver Building
Pittsburgh, PA 15222

APPENDIX C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: ROSE CONNOR a/k/a ROSE CONNER, Debtor ROSE CONNOR a/k/a ROSE CONNER, Plaintiff vs. W. C. LEASURE, an individual, and OLD HOME MANOR, INC., a Pennsylvania corporation, Defendants	Bankruptcy No. 77-261

Order of Court

AND NOW, this 10th day of December, 1980, upon the basis of the Memorandum Opinion of even date herewith, IT IS ORDERED, ADJUDGED and DECREED that Rose Connor a/k/a Rose Conner is the owner of all that right, title and interest to property described in Westmoreland County Deed Book Volume 1128, page 578. IT IS further ORDERED, ADJUDGED, and DECREED that W. C. Leasure and Old Home Manor, Inc., their successors and assigns, have no right, title and interest in and to that property owned by Rose Connor and described in Westmoreland County Deed Book Volume 1128, page 578.

IT IS further ORDERED, ADJUDGED, and DECREED that the Complaint for Relief from Stay, filed on January 2, 1978 by W. C. Leasure, be and the same is hereby DENIED and DISMISSED and the proceeding pending at No. 12,269 of 1978 in the Court of Common Pleas of Westmoreland

County, Pennsylvania be and the same is hereby declared null and void and of no effect.

IT IS further ORDERED that the Motion for Amended Findings of Fact and Conclusions of Law has been granted, and that the Memorandum Opinion of this date contains such Findings and Conclusions, and inasmuch as this Order alters the Order of March 21, 1980, such Order is altered and vacated; further, the Motion for New Trial is hereby DENIED.

JOSEPH L. COSETTI
Bankruptcy Judge

cc: Robert O. Lampl, Esq.
Robert J. Shostak, Esq.

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: ROSE CONNOR, a/k/a ROSE CONNER, Debtor ROSE CONNOR, a/k/a ROSE CONNER, Debtor-in-Possession, Plaintiff vs. W. C. LEASURE, an individual, and OLD HOME MANOR, INC., a Pennsylvania corporation, Defendants	Bankruptcy No. 77-2?1

Memorandum Opinion

On April 4, 1977, Rose Connor, a/k/a Rose Conner, filed a Petition for Arrangement under Chapter XI of the Bankruptcy Act and on said date was allowed to remain as Debtor-in-Possession. On February 16, 1978 Rose Connor, plaintiff, filed a Complaint against W. C. Leasure, an individual, and Old Home Manor, Inc., a Pennsylvania corporation. The action was brought to clear title to a forty-four acre tract in Derry Township, Westmoreland County, recorded in Westmoreland County Deed Book Volume 1523 (hereinafter the property will be referred to as "1523 property"). The defendants' Answer admits plaintiff's ownership to the "1523 property" but asserts a claim to other property in Derry Township, Westmoreland County. The property appears in Westmoreland County Deed Book Volume 1128 and

includes about 900 acres of coal (hereinafter this property will be referred to as "1128 property"). Subsequent to defendants' Answer, plaintiff amended her Complaint seeking the removal of defendants' clouds on plaintiff's title to the "1128 property" The defendants then filed a Motion to Dismiss based on their objection to the Bankruptcy Court's summary jurisdiction. On April 20, 1979 this Court denied the Motion to Dismiss through a Memorandum Opinion and set a date for a hearing on the merits. The trial commenced on May 24, 1979.

On December 28, 1978 the defendants filed an equity action against Rose Connor in the Court of Common Pleas of Westmoreland County to reform a certain deed. Subsequently, on January 2, 1979, the defendants filed a Complaint in this Court for Relief from Stay so that the action in the Westmoreland County Court of Common Pleas could proceed. On April 20, 1979 this Court continued generally defendants' Complaint for Relief from Stay. Defendants then filed an appeal and later filed a Motion to Stay Pending Appeal. On May 4, 1979 this Court denied the Motion for Stay and on May 22, 1979 Judge Ziegler denied the Motion for Stay.

In 1941, Rose Connor acquired certain coal property located in Derry Township, Westmoreland County, Pennsylvania. The properties were conveyed by two instruments; one, recorded in Westmoreland Deed Book Volume 1128 ("1128 property"), which contains about 900 acres, and the other recorded in Westmoreland County Deed Book Volume 1080 ("1080 property"), which contains about one hundred sixty-seven and one-half acres. Both properties were and are distinct and separate. On or about February 27, 1948 and "1080 property" was sold for unpaid taxes to Atlantic Crushed Coke Company. Subsequently, Atlantic Crushed Coke conveyed back to plain-

tiff a portion of the "1080 property" amounting to about 44 acres. This conveyance was recorded in Westmoreland County Deed Book Volume 1523, and will be referred to as the "1523 property". On May 19, 1975, about twenty-seven years later, Atlantic Crushed Coke conveyed its remaining title and interest in the "1080 property" to defendant Leasure.

The plaintiff stipulated that there was a sale in 1948 at which time 167.5 acres of coal rights were conveyed by the Commissioners of Westmoreland County to Atlantic Crushed Coke Company. This Court is in agreement that this sale constituted a conveyance of the 167.5 acres and only that amount of acres were actually sold. It is furthermore acknowledged that there was a simultaneous reconveyance to Rose Connor of 44 of those acres.

The first issue for determination is whether this Court has jurisdiction to conduct and decide the litigation. It is clear from the findings and conclusions embodied in the second part of this Memorandum Opinion, *infra*, that the plaintiff had title to the real estate in question, was never dispossessed of that title by any tax sale, and that the "claim" of title to the defendant had no legal beginning and thus went nowhere, legally speaking. Thus, defendant's adverse claim was merely colorable (if even that) and had no substance to it. Moreover, the facts indicated that plaintiff's actual possession was never disturbed by anyone; in addition, defendant never had possession.

In view of the foregoing, this Court's review of the law in its Memorandum Opinion of April 20, 1979 applies with equal force now that the trial has been completed and is incorporated herein by reference in the interest of brevity. It should be noted that on April 26, 1979 the United States Court of Appeals for the Third Circuit had

occasion to again restate the concepts of jurisdiction in *In the Matter of Roloff*, 598 F.2d 783 (3d Cir. 1979). The question was whether foreclosed real estate was within the jurisdiction of the Chapter XII Bankruptcy Court so that an affirmative defense or counterclaim could have been asserted by the debtors to the mortgagee's complaint for relief from stay. Footnote 9 of that decision and the holding as to jurisdiction have made it clear that in the Third Circuit it is certain that possession by the debtor in a Chapter proceeding vests the Bankruptcy Court with jurisdiction. (Uncertainty exists, indeed, it may be doubtful, that jurisdiction vests where title is in the debtor but possession rests elsewhere). *Roloff* thus applied to the case at bar must favor the plaintiff, because this Court has jurisdiction under any theory the defendant here might care to advance as tested against the evidence and state of the law as discussed *infra*.

Nonetheless, we shall offer some comments on cases cited by defendant. The first case was *Harrison v. Chamberlain*, 271 U. S. 191(1925). That case involved a trustee's attempt to recover money *held by another* by way of a summary bankruptcy proceeding. In holding against the trustee, the Court defined the difference between a third party's substantial or merely colorable claim, a definition which seems to have satisfactorily survived these subsequent 55 years and the promulgation of the Bankruptcy Rules. However, the facts of that case are quite different from our case, for possession was in the third party and not the trustee (or debtor-in-possession).

Defendant has cited *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478 (1940), for the proposition that "In cases where the ownership of real property is controverted, the courts have restrained the exercise of the

summary jurisdiction of the Bankruptcy Courts." "Page 7 of defendant's brief. The quoted material from *Thompson*, as recited on said page of the brief, ignored the introductory two sentences of that paragraph of the third portion of the Court's opinion. Those omitted sentences read as follows:

> "*Third.* A court of bankruptcy has an exclusive and nondelegable control over the administration of an estate in its possession. But the proper exercise of that control may, where the interests of the estate and the parties will best be served, lead the bankruptcy court to consent to submission to state courts of particular controversies involving unsettled questions of state property law and arising in the course of bankruptcy administration." 309 U.S. at p. 483.

Thompson did indeed involve a unique situation. The federal court in Missouri in a § 77 case had to decide ownership to oil underlying lands upon which the railroad had a right of way. The lands were in Illinois (not Missouri) and the state courts of Illinois had never decided the question. It seems, therefore, that defendant has sought to read more into *Thompson* than proper. A close analysis of that case results in favor of the plaintiff here.

The other major case relied upon by defendant is *Bel Marin Keys Comm. Serv. v. Bel-Marin Ent.*, 582 F.2d 477 (9th cir. 1978). In that case the litigants were the owner (Keys) of a lot in a development on which a lagoon was created and the trustee who succeeded to the rights of the bankrupt (Ent.) which was the owner of an adjacent lot. Prior to bankruptcy, the bankrupt and others were sued by Keys which sought an injunction restraining construction of docks and piers. After the intervening

bankruptcy the trustee of Ent. filed a suit in Bankruptcy Court against Keys. The trustee claimed ownership of an easement over the lagoon area and thus claimed the right to construct and maintain docks on the easement. The Court held that there was no jurisdiction. However, that decision was based upon a number of specific factors:

1. The California law on easements was "exceptionally complex." 582 F.2d at p. 481.
2. The California courts had not passed on the important questions essential to the issues of validity of the easement. *id.*
3. The case involved "unresolved issues of California real property law and significant issues of fact." *id.*
4. The trustee "presented no evidence showing a direct grant of Easement A to the bankrupt or its predecessors in interest." *id.* at p. 482.
5. The appellant (*Keys*) was "the conceded owner of Lot 168, and the conceded owner of at least a servient estate in alleged Easement A [having] a possessory interest in the property." *id.* at p. 482.

It can thus be seen that *Bel Marin* is another one of those special cases in the tradition of *Thompson*. In short, its holding is proper but must be understood in terms of its unique facts. In our case no such unusual facts exist.

We come, therefore, to the substantive portion of our opinion.

The substantive issue before this Court is: whether the property in question, to-wit, the "1128 property", was assessed and thereafter lost at a tax sale or was never assessed and therefore never lost and stayed in the ownership of the plaintiff, Rose Connor.

The overwhelming evidence and credible testimony presented to this Court compels the finding that the "1128 property" was never assessed. Mr. Wendling, Director of Mapping Department of Westmoreland County, testified that the "1128 property" was never assessed but that it is presently assessed. He indicated that the first time the property appeared assessed on the books was in 1976 or 1977 (transcript dated May 25, 1979, p. 18 and 19). Later in the trial Mr. Hoehler, an attorney and Solicitor for the County's Treasurer's Office, also testified that he could find no assessments for the coal in the "1128 property" (transcript dated May 26, 1979, p. 15). He testified that all the parcels of the "1128 property" had never been assessed, that certain parts had been assessed and certain parts had been paid but that all of the coal had not been assessed. He further stated that he found certain specific parcels assessed and the taxes had been paid by a third party (transcript dated May 29, 1979, p. 183).

An assessment is a sum of money fixed under a given note on property valuation and fixes a time when it is due and payable as taxes. See *Broad and Sansom Realty Co. v. Fidelity Bldg. Corp.*, 141 A. 34, 292 Pa. 287 (1928). "The assessment of property is part of the machinery of taxation. A tax assessment is necessary in order to create and define the liability of a taxpayer." 36 P.L.E. Taxation § 131, pp. 85, 86.

The law has been clear for the last 140 years that the assessment of a tax by some proper authority is essential to the validity of a sale of land by a treasurer. See *Bratton v. Mitchell*, 1 Watts & S. 310 (1841). The reason for this requirement is the Constitution, which mandates not only that taxes be uniform but that they be levied and collected. P.S. Const. Art. 9 § 1. Therefore, in order to authorize a sale for taxes, there must be an annual

assessment upon a particular tract (the triennial assessment is not enough; it merely fixes the basis of assessment). *Greenough v. Fulton Coal Co.*, 74 Pa. 486 (1874).

The law is also clear that persons assessed for taxes are entitled to notice of the assessment. See *Joos v. Commonwealth of Pennsylvania*, 19 Dauph. 254 (1916). Because every taxpayer is entitled to an opportunity to be heard by the taxing authority before a tax is conclusively settled against him. 36 P.L.E. Taxation § 231, page 173.

Therefore, since in the case before us the only reliable and credible evidence is that the "1128 property" was never assessed and that Rose Connor never received any notice of an assessment, this Court has no alternative but to find that there were no taxes owed. Furthermore, on the alternative, if it had been found that there were taxes owed and a sale for taxes had taken place, we would be compelled to hold that it was void since there was a violation of the U. S. Constitution and the Pennsylvania Constitution. In conclusion, there has been no conveyance of the 900 acres other than some coal leases with unrelated parties and some unrecorded leases plus physical activity on the lands.

In view of the foregoing facts and law it is unnecessary to comment upon the defandents' arguments concerning the law as to the title acquired by a purchaser at a tax sale and the effect of the Commissioners' deed.

The defendants argue that Mr. Leasure owns certain parcels of the "1128 property" since he has paid taxes owed. Mr. Leasure testified that he paid the tax for 1939, 1940 and 1941 (transcript dated May 30, 1979, page 240). Mr. Hoehler testified that he found that on certain parcels taxes had been paid by a third party (transcript

dated May 29, 1979, page 183). It is not the duty of this Court to determine if Mr. Leasure in fact paid or did not pay taxes owing on Rose Connor's property. It is irrelevant who pays the tax. The payment of tax does not have any bearing on the ownership of property, nor does it give any rights in the property to the person making the payment. See *In re Crystal Realty Co.*, 5 Bankr. Ct. Dec. 413 (D. Mass. 1979). The only way a person may acquire property by paying taxes owed is through a valid tax sale. Since there was not a valid tax sale, if Mr. Leasure in fact paid taxes owing on the "1128 property" it is insignificant and does not destroy Rose Connor's continuing right to ownership of the property.

As stated earlier, the defendant filed an equity action against plaintiff at no. 12,269 of 1978 in the Court of Common Pleas of Westmoreland County. Later, the defendant filed a Complaint for Relief from Stay for permission to pursue said litigation. Trial on that Complaint was continued generally due to the pendency of the Motion to Dismiss filed in the subject case. The decision on the merits in the case at bar is dispositive of the dispute between the same parties and involving the same issues. Thus it is res judicata and it would be a useless and meaningless act to grant relief from stay. Thus, the prayer of said Complaint should be denied. Moreover, to assure that the pendency of the equity action does not interfere with the debtor's enjoyment of the property and the right to convey same or interests or portions thereof, it is appropriate that this matter be included in the Order to be entered.

An appropriate Order embodying all of the foregoing will be entered.

Dated at Pittsburgh, Pennsylvania this
21st Day of March, 1980

BERNHARD SCHAFFLER
Bankruptcy Judge

cc: Robert O. Lampi, Esq.
620 Frick Building
Pittsburgh, PA 15219

Robert J. Shostak, Esq.
2532 Oliver Building
Pittsburgh, PA 15222

APPENDIX E

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: ROSE CONNOR, a/k/a ROSE CONNOR, Debtor ROSE CONNOR, a/k/a ROSE CONNER, Debtor-in-Possession, Plaintiff vs. W. C LEASURE, an individual, and OLD HOME MANOR, INC., a Pennsylvania Corporation, Defendants	Bankruptcy No. 77-261

Order of Court

AND NOW, this 21st day of March, 1980, upon the basis of the Memorandum Opinion of even date herewith, IT IS ORDERED, ADJUDGED, and DECREED that Rose Connor a/k/a Rose Conner is the owner of all the right, title and interest to property described in Westmoreland County Deed Book Volume 1128, page 578 and in Westmoreland County Deed Book Volume 1523, page 466. IT Is further ORDERED, ADJUDGED, and DECREED that W. C. Leasure and Old Home Manor, Inc., their successors and assigns, have no right, title and interest in and to that property owned by Rose Connor and described in Westmoreland County Deed Book Volume 1128, page 578 and the property described in Westmoreland County Deed Book Volume 1523, page 466, including, but not limited to, anything which may appear to the contrary in Westmoreland County Deed Book Volume 2203, page 533;

Westmoreland County Deed Book Volume 2190, page 640; and Westmoreland County Deed Book Volume 2240, page 499.

IT IS further ORDERED, ADJUDGED, and DECREED that the Complaint for Relief from Stay, filed on January 2, 1978 by W. C. Leasure, be and the same is hereby DENIED and DISMISSED and proceeding pending at No. 12,269 of 1978 in the Court of Common Pleas of Westmoreland County, Pennsylvania be and the same is hereby declared null and void and of no effect.

BERNHARD SCHAFFLER
Bankruptcy Judge

cc: Robert O. Lampl, Esq.
Robert J. Shostak, Esq.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: ROSE CONNOR, a/k/a ROSE CONNER, DEBTOR-IN-POSSESSION ROSE CONNOR, a/k/a ROSE CONNER, Plaintiff vs W. C. LEASURE, an individual and OLD HOME MANOR, INC., a Pennsylvania Corporation, Defendants	In Chapter XI Bankruptcy No. 77-261

Memorandum Opinion

An Amended Complaint was filed by Plaintiff on May 10, 1978 and another on August 9, 1978 (there is no need to recite the contents of the original Complaint and the genesis of the Amended Complaints). That pleading sought to strike certain recorded deeds alleged to have created a cloud upon certain real estate allegedly owned by the debtor.

Defendants filed a Motion Under Rule 12 setting forth 3 separate matters. Two of said matters (the naming of Old Home Manor, Inc. as a defendant, and the lack of pleading specificity) were mooted by an agreement of counsel and the aforesaid Amendment To Complaint filed August 9, 1978. See letter of August 8, 1978 from Plaintiff's counsel.

It is the third matter which is the issue before the Court. We quote it as presented in the Motion:

"Both defendants move to have the Amended Complaint dismissed because the Bankruptcy Court lacks jurisdiction over the subject matter. The matter in controversy in this case being title to real estate, it is not within the power of the Bankruptcy Court to adjudicate."

Various briefs were filed after counsel agreed not to appear at a scheduled argument (without so advising the Court in advance) and to have the matter submitted on the briefs. Because of the importance of the issues involved the Court entered an Order directing oral argument. As directed, extensive oral argument was held at Greensburg, Pa. on November 28, 1978. During that argument counsel made various representations on matters considered by the Court to be of importance. Where the representations were not controverted the Court will consider those representations as being correct for purposes of disposition of the Motion as to jurisdiction. Of course, all "... well-pleaded material allegations of the Complaint are taken as admitted." Moore Man. 11.06 [1] at p. 11-19.

Our review of the law must start with Section 311 of the Bankruptcy Act: "Where not inconsistent with the provisions of this chapter, the Court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located." An excellent discussion of this Court's summary jurisdiction is found at 8 *Collier on Bankruptcy* (14th ed) §3.02. From the narrative discussion at that section we call out the following principles:

"That jurisdiction [given by Section 311] over property rests on ownership of property, as distinguished from possession."

"Where the Court in a Chapter XI case has possession of the property, even though ownership thereof is not in the debtor, it has summary jurisdiction over a controversy with respect to the property."

"Under §311, either ownership in the debtor at the time the petition was filed, or possession of the Court, is a basis for summary jurisdiction over controversies."

"Where ownership is in a third party, and the Court does not have possession, §311 does not confer summary jurisdiction over a controversy, but such would have to be determined in a plenary suit."

"But where a third party in possession claims ownership of the property, the Bankruptcy Court has jurisdiction in the first instance to determine if the adverse claim of ownership is substantial or colorable; is found to be substantial the Court must decline to determine the merits and must dismiss the summary proceedings, but if found to be merely colorable the Court has jurisdiction to adjudicate the merits summarily."

In our case I find that the defendants never had possession of the property in question, never operated the lands, never leased the lands to anyone else, never instituted any action (prior to the date this Chapter XI case was filed) to clear their purported title or to dispossess or challenge others asserting possessory or ownership rights. Their whole basis of interest hinges upon deeds from the County Commissioners of Westmoreland County which deeds appear outside the direct and unbroken chain of title in and to the Plaintiff.

On the other hand, the Plaintiff has the unbroken claim of title, her husband mined coal from the property in the past, unrecorded and recorded leases had been granted by Plaintiff in the past, and, in the words of counsel for defendants at the oral argument, "Rose Connor has title subject to whatever claim existed in 1948." Moreover, the royalties to be derived from a lease agreement approved by this Court are crucial to the success of this Chapter XI case.

The foregoing facts are taken as established at this point and thus lead me to conclude that this Court has jurisdiction on both bases: (1) because this Court has possession of the property, and (2) the claim of the defendants is merely colorable. Either of said reasons would be sufficient basis for jurisdiction.

Although application of the law in these types of cases must necessarily hinge upon the subjective facts of each case, both parties have cited numerous cases and we shall briefly commend upon some of them.

Defendants have cited *In Re Perris Cattle Company*, 218 F. Supp. 673 (S.D. Cal. 1963). There the adverse claimant removed hay from the bankrupt's premises prior to bankruptcy because it had been returned for credit subsequent to its original sale from claimant to bankrupt. The Court held that the claim was bona fide and not merely colorable, thus requiring a plenary suit by the trustee. We agree with the statements of law in that case.

So, too, do we agree with the statements of law in *Matter of Copeland*, 391 F. Supp. 134 (D. Del. 1975). There the facts concerned stocks pledged by a Chapter XI debtor-in-possession. The Court held that although

the debtor did not have physical possession it had ownership and thus Section 311 gave the Court jurisdiction.

Defendants also cite *In Re Rubin*, 378 F.2d 104 (3rd Cir. 1967). Again, we agree with the stated law in that case. There, that law was applied to unusual facts, i.e. driver-salesman routes for baked goods.

Plaintiff has cited *United States v. Owens*, 329 F.2d 678 (5th Cir. 1964) for the colorable verses substantial proposition with which we all agree. The actual facts, of course, dealt with balances held by the Government, due to the Chapter X debtor on contracts, but held for taxes owed.

Plaintiff has also cited *In Re Stockman Development Co.*, 447 F.2d 387 (9th Cir. 1971). Again, the principles therein generate no controversy, although there I believe a stipulation presented to a Bankruptcy Judge might well result in jurisdiction conferred by consent, a matter which was raised here by Plaintiff. I will take but a moment to dispose of that issue: I find and conclude that defendants did non consent, actual or impliedly, to jurisdiction.

In *In Re Barasch*, 439 F.2d 1393 (9th Cir. 1971) the Court held that an adverse claim was substantial where the claimant was awarded a portion of community property by an interlocutory divorce decree.

The foregoing recitation points out what is the familiar duty of a Court, i.e. to fit variations of factual situations within established principles of law. We are satisfied that our conclusion in the case at bar does not violate the law nor the facts of our case.

Defendants have also argued alternatively that this Court, if it has jurisdiction, should defer exercising it on

the basis of *Thompson v. Magnolia Petroleum Company*, 309 U.S. 478 (1940). In that case the Federal Court in Missouri, in a §77 railroad reorganization case, was asked to decide the ownership of the fee interest in lands (and hence the right to oil underlying these lands) upon which the railroad had a right of way. The lands were in Illinois and the state courts of Illinois had never decided such a question, although two U.S. Circuits had and had reached two different results. The Supreme Court held that the Illinois state courts ought to decide the unsettled question of state property law.

The differences between the cited case and the matter at hand are obvious. This Court will not be called upon to enter areas of state law upon which the state courts have never entered. Moreover, this Court will be dealing with the law of the state in which it sits. Finally, although the facts of our case may be complex and although we might be called upon to review old records and documents, we see no particular expertise vested elsewhere which can give these parties a quicker and more thorough treatment of their dispute. We say that knowing that counsel will give us assistance in their thorough presentations at trial and via subsequent briefs.

In view of the foregoing, this Court has jurisdiction and shall keep it. An appropriate Order will be entered.

On January 2, 1979 the defendant, W. C. Leasure, filed, as a plaintiff, his Complaint For Relief From Stay Provided By Federal Rules of Bankruptcy Procedure, Rule 11-44. This was filed after the Motion To Dismiss was filed, after the argument was held, and while the Court had the Motion To Dismiss under advisement. The Supplemental Memorandum filed by W. C. Leasure un-

questionably advises us that both matters raise the same jurisdictional issue. See Supplemental Memorandum at p. 2.

A summons had been issued on the Complaint For Relief From Stay and it was served. We continue the hearing generally because of the Motion To Dismiss in the debtor's action here.

Although it is not altogether clear why W. C. Leasure chose to place the very same matter at issue here twice, it seems that he has. We note that if Rose Conner loses her action against Leasure and Old Home Manor, Inc., Leasure is only free to sue Conner if relief from stay is obtained. Yet, in that situation Leasure's request for relief from stay would be academic. Should Leasure lose the suit brought by Conner it seems that a relief from stay request would also be academic. Since we are told by Bankruptcy Rule 11-44(d) that we must set the trial of a Complaint seeking relief from a stay at the earliest possible date and we are also told that "it shall take precedence over all matters except older matters of the same character," and since the case captioned above is not ready for responsive pleading and then trial, and since the relief from stay case is not as advanced, and since the captioned case's disposition will render the other academic, we feel that the spirit of Rule 11-44(d) will most surely be satisfied by keeping the Complaint For Relief From Stay in abeyance and in general continuance.

While it might at first blush appear that we should dismiss that Complaint, we feel, after reflection, that events might develop which could harm Leasure if that were done. First, it is possible that Conner might not be ready to present her case on time thus requiring this Court's consideration of Leasure's Complaint so as to

avoid delay. It will be less expensive for Leasure if he is not required to prepare and file a new Complaint. Moreover, that process would take some time in preparation, filing, service, etc. On the other hand, if the original Complaint is pending, this Court shall be in a position to act quickly as we are commanded by Rule 11-44(d). We must give all parties their rights and must minimize litigation and its costs in time and money. Our separate Order to be entered will hopefully do so.

Dated at Pittsburgh, Pennsylvania,
this 20th day of April, 1979.

BERNHARD SCHAFFLER
Bankruptcy Judge

cc: Michael Handler, Esq.
Mack Building
616 Philadelphia Street
Indiana, PA 15701

Robert O. Lampl, Esq.
620 Frick Building
Pittsburgh, PA 15219

James R. McDonald, Esq.
319 South Maple Avenue
Greensburg, PA 15601

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: ROSE CONNOR, a/k/a ROSE CONNOR, Debtor-in-Possession W. C. LEASURE, Plaintiff VS. ROSE CONNOR, a/k/a ROSE CONNOR, Defendant	In Chapter XI Bankruptcy No. 77-261

Order

AND NOW, this 20th day of April, 1979, upon the basis of the Memorandum Opinion and Order, entered of even date herewith, in the case of Rose Connor, a/k/a Rose Conner, Plaintiff, vs. W. C. Leasure, an individual and Old Home Manor, Inc., a Pennsylvania Corporation, Defendants, IT IS ORDERED that hearing on the above-captioned Complaint For Relief From Stay Provided By Federal Rules of Bankruptcy Procedure, Rule 11-44 be and the same is hereby continued generally.

BERNHARD SCHAFFLER
Bankruptcy Judge

cc: Michael Handler, Esq.
Mack Building
616 Philadelphia Street
Indiana, PA 15701

Robert O. Lampl, Esq.
620 Frick Building
Pittsburgh, PA 15219

James R. McDonald, Esq.
319 South Maple Avenue
Greensburg, PA 15601

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: ROSE CONNOR, a/k/a [illegible] CONNER, DEBTOR-IN-POSSESSION ROSE CONNOR, a/k/a ROSE CONNER, PLAINTIFF VS. W. C. LEASURE, an individual and Old Home Manor, INC., a Pennsylvania Corporation, Defendants	In Chapter XI BANKRUPTCY No. 77-261

Order

AND NOW, this 20th day of April, 1979, upon the basis of the Memorandum Opinion of even date herewith, IT IS ORDERED, ADJUDGED and DECREED that defendants' Motion Under Rule 12, filed on June 16, 1978, be and the same is hereby DENIED.

IT IS FURTHER ORDERED that, pursuant to Bankruptcy Rules 11-61(a) and 712(a)(1), the defendants shall serve their responsive pleading.

IT IS FURTHER ORDERED that trial of the captioned case shall proceed at the Court House, Greensburg, Pa., on May 24, 1979 at 10:30 A.M.

BERNHARD SCHAFFLER
Bankruptcy Judge

cc: Michael Handler, Esq.
Mack Building
616 Philadelphia Street
Indiana, PA 15701

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 81-2615, 81-2616

ROSE CONNOR a/k/a Rose Conner, Debtor
Rose Connor a/k/a Rose Conner,
Appellee
v.
W. C. LEASURE, an individual;
OLD HOME MANOR, INC., a Pennsylvania Corp.;
and
TED SIMON, JOHN REGOLI, and
ROBERT H. MILLER,
in their capacity as Commissioners
for Westmoreland County, Commonwealth
of Pennsylvania,
Appellants

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
(Civil Action No. 81-0274)

Argued June 24, 1982
Before: GARTH and BECKER, *Circuit Judges*
and FULLAM, *District Judge**

JUDGMENT ORDER

After considering appellants' contentions, to wit, that (1) the Bankruptcy Court erred in determining that it had summary jurisdiction to decide title to the property in dispute, (2) even if it did have summary jurisdiction, the Bankruptcy Court abused its discretion by refusing to abstain from exercising that jurisdiction, (3) the Bankruptcy Court's exercise of summary jurisdiction violated the Tax Injunction Act, 28 U.S.C. §1341, (4) in determining that Connor was not deprived of title to the property in dispute by any tax sale, the Bankruptcy Court erred and was clearly erroneous, and (5) this court should amend the Bankruptcy Court's order of December 10, 1980, in order to render it consistent with the Bankruptcy Court's opinion of December 10, 1980, it is

ADJUDGED AND ORDERED that the judgment of the district court, which affirmed the orders of the Bankruptcy Court, be and is hereby affirmed.

Costs taxed against appellants.

By the Court,
LEONARD I. GARTH
Circuit Judge

Attest:
SALLY MRVOS
Sally Mrvos, Clerk
DATED: June 29, 1982

---

*Honorable John P. Fullam, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

APPENDIX J
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 81-2615, 81-2616

ROSE CONNOR a/k/a Rose Conner, Debtor
ROSE CONNOR a/k/a Rose Conner,
Appellee
v.
W. C. LEASURE, an individual;
OLD HOME MANOR, INC., a Pennsylvania Corp.;
and
TED SIMON, JOHN REGOLI, and
ROBERT H. MILLER,
in their capacity as Commissioners
for Westmoreland County, Commonwealth
of Pennsylvania,
Appellants

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
(Civil Action No. 81-0274)

Sur Petition for Rehearing
Present: GARTH, BECKER, *Circuit Judges*
and FULLAM, *District Judge**

The petition for rehearing filed by Appellant, W. C. Leasure, in the above entitled case having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the petition for rehearing is denied.

By the Court:
LEONARD I. GARTH
Circuit Judge

Dated: July 27, 1982

---

*Honorable John P. Fullan, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

ROSE CONNOR

vs.

W. C. LEASURE, et al,

Appellant

No. 81-2615

Pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, it is ORDERED that issuance of the certified judgment in lieu of formal mandate in the above cause be, and it is hereby stayed until Sept. 2, 1982

LEONARD I. GARTH
Circuit Judge

Dated: Aug. 13, 1982

TDCO

Know All People To Whom These Presents Shall Come:

ROBERT A. KILGORE, Treasurer of the County of Westmoreland, in the Commonwealth of Pennsylvania, send greeting:

Whereas, a certain Tract of Land

Assessed to: Rose Connor

containing 1 38 Acres, situate in the

Township of Derry in said County of Westmoreland

hath been rated and assessed with divers taxes, to-wit:

YEAR and TYPE	TAXES				
	County	[illegible]	School	Road or Borough	Total
49	3.58	.14	15.51	6.31	25.89
[illegible]	.15	.06	1.96	.29	2.46
47			15.53		15.53
			2.87		2.87
	4.50				4.50
COSTS	.50				.50
TOTAL	9.04	.50	35.87	7.12	52.53

which remain unpaid, and the Treasurer having offered the same for sale, agreeably to law, and no persons bidding therefore a sum equal to the amount of taxes due, and the costs of advertising and sale, it therefore became the duty of the Commissioners to buy the same, which they have accordingly done on the 7th day of August 19 50 for the sum of

Fifty Two and----------53/100 Dollars.

And Whereas, therefore, I, the said Treasurer, did make a report and return to the Court of Common Pleas of Westmoreland County, at No. 200 November Term, 19 50 of the said Court, which said report and return was on September 26, 19 50 confirmed nisi, and a decree of absolute confirmation was duly entered on November 27, 19 50 all in the manner and form as required by the terms and provisions of the Act of General Assembly of the Commonwealth of Pennsylvania.

Now This Indenture Witnesseth: that I, ROBERT A. KILGORE, Treasurer of said County, do, for and in consideration of the said sum, grant, bargain and sell all the before mentioned property, to Frank K. Cochran, J. Calvin Turner, and W. Everett Noel County Commissioners of said County, to hold to them and their successors in office forever, subject to the redemption allowed by law.

In Witness Whereof, I have hereunto set my hand and seal, the 27th day of November A. D. 19 50

Sealed and delivered in the presence of:

Carrie Fellers

Robt. A. Kilgore (SEAL)
Treasurer

Commonwealth of Pennsylvania
County of Westmoreland } SS:

Before me, a Alderman in and for said County and State, personally appeared ROBERT A. KILGORE, who, in due form of law acknowledged the foregoing indenture to be his act and deed as Treasurer of Westmoreland County, Pennsylvania, and desired the same to be recorded as such.

Witness my hand and Official seal this 6 day of Dec, 19 50 Ralph J. Darby (SEAL)

My Commission Expires

To All Whom These Presents May Come, Greetings:

County Commissioners of the
County of Westmoreland
To

We, the County Commissioners of the County of Westmoreland, Pennsylvania under and by virtue of the Acts of Assembly in such cases made and provided, the right of redemption to lands within described and having elapsed, and hereby assenting to such redemption, and the owner having exhibited to us a receipt from the County Treasurer in full for taxes, costs, interest, etc., due thereupon up to the year 19 ____, do hereby Grant, Bargain and Sell unto the said _____ all the right and title which the County of Westmoreland may have acquired under the within deed and sale, dated the _____ day of _____ 19 ____, for taxes assessed on _____, situate in _____ Westmoreland County, Pennsylvania.

Witness our hands and the seal of said county this _____ day of _____ 19 ____

State of Pennsylvania }
County of Westmoreland } SS:

County Commissioners

Before me, the undersigned authority, in and for said County and State, personally came _____, County Commissioners of the County of Westmoreland, who in due form of law, acknowledged the above Deed Poll to be their act and deed to the end that the same might be recorded as such.

In Witness Whereof, have hereunto set my hand and seal this _____ day of _____ 19 ____

_____ (SEAL)

No. 552

Treasurer's Deed

Westmoreland County, Pennsylvania

ROBERT A. KILGORE
TREASURER

To

Frank E. Cochran

J. Calvin Turner

W. Everett Hall

Property Assessed to

Ross Corners

Located

Derry Township

Dated 8/7/50

STATE OF PENNSYLVANIA
COUNTY OF WESTMORELAND } SS:

Recorded on this ____ day of _____ A. D. 19 ____

in the Recorder's Office of said County, in Deed Book Volume _____ Page _____

Given under my hand and seal of the said office, the date above written.

_____
Recorder

PROPERTY RECORD

CONNER, Rose
Box 878
New Derry, Pa.

From Pennsylvania Company for Insurances on Lives & Granting of Annuities, Recorded B. K. 32 - page 896

Pittsburgh
Reserve - Kalbonna Co. Sq. Tracts
Drinker Lease

NOTE: This coal processed for the first time - 1947

Pittsburgh Coal
1.38 [illegible] 851.00 1175.

1175.

1175.
870.

May 1st 47
BOARD
Ben Lybrank

TDCO

Know All People To Whom These Presents Shall Come:

ROBERT A. KILGORE, Treasurer of the County of Westmoreland, in the Commonwealth of Pennsylvania, send greeting:

Whereas, a certain Tract of Land

Assessed to: Rose Connor

containing 4.765 Acres, situate in the

Township of Derry in said County of Westmoreland

YEAR AND TITLE	TAXES				
	County	[illegible]	School	[illegible]	Total
46	12.66	1.52	51.68	22.28	91.14
47	1.58	.19	6.84	2.78	11.39
47			51.68		51.68
			10.12		10.12
	4.50				4.50
	.50				.50
TOTAL	19.24	1.71	126.32	25.06	172.33

hath been rated and assessed with divers taxes, to-wit:

which remain unpaid, and the Treasurer having offered the same for sale, agreeably to law, and no persons bidding therefore a sum equal to the amount of taxes due, and the costs of advertising and sale, it therefore became the duty of the Commissioners to buy the same, which they have accordingly done on the 7th day of August 19 50 for the sum of One Hundred Seventy Two and 33/100 Dollars.

And Whereas, therefore, I, the said Treasurer, did make a report and return to the Court of Common Pleas of Westmoreland County, at No. 200 November Term, 19 50 of the said Court, which said report and return was on September 26, 19 50 confirmed nisi, and a decree of absolute confirmation was duly entered on November 27, 19 50 all in the manner and form as required by the terms and provisions of the Act of General Assembly of the Commonwealth of Pennsylvania.

Now This Indenture Witnesseth, that I, ROBERT A. KILGORE, Treasurer of said County, do, for and in consideration of the said sum, grant, bargain and sell all the before mentioned property, to Frank E. Cochran, J. Calvin Turner, and U. Bracett Beal County Commissioners of said County, to hold to them and their successors in office forever, subject to the redemption allowed by law.

In Witness Whereof, I have hereunto set my hand and seal, the 27th day of November A. D. 19 50.

Sealed and delivered in the presence of:

Carrie Tedrow — Rex. a. Kilgore (SEAL) Treasurer

Commonwealth of Pennsylvania } ss:
County of Westmoreland

Before me, a Alderman in and for said County and State, personally appeared ROBERT A. KILGORE, who, in due form of law acknowledged the foregoing indenture to be his act and deed as Treasurer of Westmoreland County, Pennsylvania, and desired the same to be recorded as such.

Witness my hand and Official seal this 6 day of Dec. 19 50 Ralph L. Tracy (SEAL)

Notary Public

My Commission Expires [illegible]

To All Whom These Presents May Come, Greetings:

County Commissioners of the County of Westmoreland To

We, the County Commissioners of the County of Westmoreland, Pennsylvania, under and by virtue of the Acts of Assembly in such cases made and provided, the right of redemption to lands within described not having elapsed, and hereby asserting to such redemption, and the owner having exhibited to us a receipt from the County Treasurer in full for taxes, costs, interest, etc., due thereupon up to the year 19 ____, do hereby Grant, Bargain and Sell unto the said _____ all the right and title which the County of Westmoreland may have acquired under the within deed and sale, dated the _____ day of _____ 19 ____, for taxes assessed on _____ situate in _____ Westmoreland County, Pennsylvania.

Witness our hands and the seal of said county this _____ day of _____ 19 ____

State of Pennsylvania } SS:
County of Westmoreland }

_____
_____
_____
County Commissioners

Before me, the undersigned authority, in and for said County and State, personally came _____ County Commissioners of the County of Westmoreland, who in due form of law, acknowledged the above Deed Poll to be their act and deed to the end that the same might be recorded as such.

In Witness Whereof, have hereunto set my hand and seal this _____ day of _____

_____ (SEAL)

No. 558

Treasurer's Deed

Westmoreland County, Pennsylvania

ROBERT A. STUDDER
TREASURER

To

Frank K. Gathrie

J. Calvin Turner

M. Franklin Reed

Property Assessed to

Ross Greene

Located

Derry Township

Dated 8/21/50

STATE OF PENNSYLVANIA } SS:
COUNTY OF WESTMORELAND }

Recorded on this ____ day of _____ A. D. 19 ____

In the Recorder's Office of said County, in Deed Book Volume _____ Page _____

Given under my hand and seal of the said office, the date above written.

_____
Recorder

COOPER, Rose
Box 476
New Derry, Pa.

From Pennsylvania Company for [illegible] on lives &
Promise of Annuities. Recd ad f.r. 1948 - 2128 page 570

Pittsburgh
"Pierce-Bedeliier-Per. Trust"
Marks L.

NOTE: This coal assessed for the first time - 1947

Pittsburgh Coal
4.788 ACRES 885.00 4088.

TOTAL LAND 4088.

TOTAL LAND AND BLDG. 4088.
80% FOR ASSESSED VALUE 3270.

May 1st 1947
BOARD
Tom Fairman

TDGS

Know All People To Whom These Presents Shall Come:

ROBERT A. KILGORE, Treasurer of the County of Westmoreland, in the Commonwealth of Pennsylvania, send greeting:

Whereas, a certain Tract of Land

Assessed to: Rose Connor

containing 5 Acres, situate in the

Township of Darry in said County of Westmoreland

YEAR AND CITY	YEARS					
	County	Township (incl. Boro)	School	Road or Borough	Total
48	11.38	1.60	57.38	21.38	95.64
PENALTY 5% INT. 6%	1.66	.80	7.17	2.93	11.96
47			57.37		57.37
PENALTY 5% INT. 6%			10.61		10.61
PENALTY 5% INT. 6%					
PENALTY 5% INT. 6%					
PENALTY 5% INT. 6%					
PENALTY 5% INT. 6%					
COSTS	4.50 .50				4.50 .50
TOTAL	19.04	1.80	132.53	26.31	180.58

hath been rated and assessed with divers taxes, to-wit:

which remain unpaid, and the Treasurer having offered the same for sale, agreeably to law, and no persons bidding therefore a sum equal to the amount of taxes due, and the costs of advertising and sale, it therefore became the duty of the Commissioners to buy the same, which they have accordingly done on the 7th. day of August 19 50 for the sum of One Hundred Eighty and ..... 58/100 Dollars.

And Whereas, therefore, I, the said Treasurer, did make a report and return to the Court of Common Pleas of Westmoreland County, at No. 200 November Term, 19 50 of the said Court, which said report and return was on September 26, 19 50 confirmed nisi, and a decree of absolute confirmation was duly entered on November 27, 19 50 all in the manner and form as required by the laws and provisions of the Act of General Assembly of the Commonwealth of Pennsylvania.

Now This Indenture Witnesseth that I, ROBERT A. KILGORE, Treasurer of said County, do, for and in consideration of the said sum, grant, bargain and sell all the before mentioned property, to Frank K. Cochran, J. Calvin Turner, and W. Everett Noel County Commissioners of said County, to hold to them and their successors in office forever, subject to the redemption allowed by law.

In Witness Whereof, I have hereunto set my hand and seal, the 27th. day of November A. D. 19 50

Sealed and delivered in the presence of:

Harris Fellers

Robt. A. Kilgore (SEAL)
Treasurer

Commonwealth of Pennsylvania
County of Westmoreland | ss:

Before me, a Alderman in and for said County and State, personally appeared ROBERT A. KILGORE, who, in due form of law acknowledged the foregoing indenture to be his act and deed as Treasurer of Westmoreland County, Pennsylvania, and desired the same to be recorded as such.

Witness my hand and Official Seal this 6 day of Dec. 19 50 Ralph L. Casey (SEAL)

NOTARY PUBLIC
My Commission Expires: 1951

To All Persons These Presents May Come, Greetings:

_____
_____
_____

County Commissioners of the
County of Westmoreland
To

_____
_____

We, the County Commissioners of the County of Westmoreland, Pennsylvania under and by virtue of the Acts of Assembly in such cases made and provided, the right of redemption to lands within described not having elapsed, and hereby assenting to such redemption, and the owner having exhibited to us a receipt from the County Treasurer in full for taxes, costs, interest, etc., due thereupon up to the year 19 ____, do hereby Grant, Bargain and Sell unto the said _____

_____ all the right and title which the County of Westmoreland may have acquired under the within deed and sale, dated the _____ day of _____ 19 ____, for taxes assessed on _____ situate in _____ Westmoreland County, Pennsylvania.

Witness our hands and the seal of said county this _____ day of _____ 19 ____

State of Pennsylvania
County of Westmoreland } SS:

_____
_____
_____
County Commissioners

Before me, the undersigned authority, in and for said County and State, personally came _____ County Commissioners of the County of Westmoreland, who in due form of law, acknowledged the above Deed Poll to be their act and deed to the end that the same might be recorded as such.

In Witness Whereof, have hereunto set my hand and seal this _____ day of _____ 19 ____

_____ (SEAL)

No. 556

Treasurer's Deed

Westmoreland County, Pennsylvania

ROBERT A. KILGORE
TREASURER

To

Frank K. Cochran

J. Calvin Turner

W. Ritchie Neal

Property Assessed to

Rhea Cousins

Located

Derry Township

Dated 3/21/50

STATE OF PENNSYLVANIA
COUNTY OF WESTMORELAND } SS:

Recorded on this ____ day of _____ A. D. 19 ____

in the Recorder's Office of said County, in Deed Book Volume _____ Page _____

Given under my hand and seal of the said office, the date above written.

_____
Recorder

THE BOYNO FUN [illegible]

PROPERTY RECORD

[illegible] 2, Rose
Box 878
Fox Dorry,

From Penney [illegible] Co. off for Insurance on 1 type &
renting of Annuities, Recorded 1 Apr 1917 - 120 page 570

[illegible] Pittsburghers

[illegible] Nigra-Rado Ilon-Pat'd Tr'd

Inlgh Serp Lasso

Note: This coal assessed for the [illegible] line - 1917

Pittsburgh Coal
8 acres @$1.00 4850.

4850.

May 1st - 47